

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Scott Hutchinson Enterprises, Inc., et al.,	:	Civil Action No. 1:01cv00776
Plaintiffs	:	Judge Weber
v.	:	PLAINTIFFS MOTION TO
Rhodes, Inc., et al.,	:	AMEND SCHEDULING ORDER
Defendants	:	

Plaintiffs hereby move the Court to amend and modify the current Scheduling Order to extend the time for submission of Expert Witness Reports for both the Plaintiffs and the Defendants.

A copy of the present Amended Scheduling Order is attached. It is requested that the dates for compliance with the requirement for the exchange of expert reports, opinions and information be extended approximately 45 days, and all other dates be similarly extended, without modifying the date for filing of the Joint Pretrial Order, nor the setting of this case for Trial in the August term.

The current Amended Scheduling Order resulted from a Motion of the Defendants, which was agreed to by the Plaintiffs, based upon the inability to obtain final reports from expert witnesses due to the requirements of the Ohio EPA and U.S. Army Corps. of Engineers for testing for the existence of the Eastern Spadefoot Toad on the subject property. While the data collection associated with this investigation was completed at the end of August,

reports and conclusions based upon that data have not been forthcoming and are not yet in the possession of the Plaintiffs. As a result, Plaintiffs do not have completed reports and opinions from their experts and are unable to fully comply with Rule 26(a)(2) of the Federal Rules of Civil Procedure, as required by the Court's Amended Scheduling Order filed July 25, 2003.

Plaintiffs' inability to provide complete information and reports is a result beyond the control of the parties. The Ohio Environmental Protection Agency, and the U.S. Army Corps of Engineers imposed special environmental testing requirements on the subject property site which were not completed until September. Although Plaintiffs' counsel has requested a written report of the results of the testing and field data collection and conclusions based on the data, the requested report is not yet finished. Until it is complete, the Expert Witnesses identified by the Plaintiff cannot complete their work, and are unable to form opinions which can be submitted to counsel in the form of reports required by Rule 26(a)(2). Because the results of these tests are fundamental to a determination of the extent of remediation required on the property, and the extent to which related costs and expenses will be incurred, even experts in the area of damages cannot complete their work until this has been done. Plaintiffs are request an extension of all scheduled deadlines approximately 45 say, so no parties will be prejudiced by the requested extension.

On October 15, 2003, Plaintiffs provided information concerning the identity of Expert Witnesses, their work, and their opinions, to the extent it is possible to do so at the present time. A copy of Plaintiffs' disclosure is attached to this memorandum to demonstrate the extent to which disclosure has been made to this point. However, the October 15, 2003 disclosure does not fully comply with Rule 26(a)(2). To permit the disclosure to be complete, it is respectfully requested that the deadline for Identification and Production of Expert Reports by

Plaintiffs be extended in accordance with the proposed Second Amended Scheduling Order, which is tendered and attached hereto.

Respectfully submitted,

s/William P. Schroeder

William P. Schroeder

Ohio Bar Number: 0027123

Attorney for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on **October 15, 2003**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECFF system and I hereby certify that I have mailed by United States Postal Service the document to the following:

Thomas R. Schuck, Esq.
Taft, Stettinius & Hollister
425 Walnut Street, Suite 1800
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Sam Casolari, Esq.
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Cincinnati, OH 45202

s/ William P. Schroeder

William P. Schroeder

RECEIVED JUL 25 2003

FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

KENNETH J. MURPHY

WESTERN DIVISION

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SCOTT HUTCHINSON ENTERPRISES, INC., et al,

Plaintiff

SOUTHERN DISTRICT OF OHIO
WEST DIVISION CINCINNATI

v

CIVIL ACTION: C-01-776

RHODES, INC., et al,

Defendant

Judge	<i>[Signature]</i>
Mag.	
Journal	<i>[Signature]</i>
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AMENDED SCHEDULING ORDER

The above styled case is before the Court on the Joint Motion of Defendants to Modify Scheduling Order (#42) and Plaintiffs' Response (#43). The Court upon review of the file GRANTS said motion. The following schedule is hereby entered and shall control the disposition of the above styled case:

(1) Plaintiff's will comply with Rule 26(a)(2) of the Federal Rules of Civil procedure no later than October 15, 2003. Defendants will comply with Rule 26(a)(2) of the Federal Rules of Civil procedure no later than December 15, 2003.

Both parties pursuant to the Rule will furnish a curriculum vitae, as well as a binding written report of the expert witnesses' testimony to any opposing party.

(2) The discovery cut-off date is February 15, 2004.

(3) Joint Status Report will be filed by February 15, 2004.

(4) All dispositive Pretrial Motions shall be filed by April 26, 2004. Upon filing of a dispositive motion, the movant shall file with the Court and serve upon opposing counsel Proposed Findings of Fact and Conclusions of Law supporting movant's request for relief. Twenty days thereafter, opposing counsel shall file with the Court and serve with its Response to the dispositive motion, a copy of Movant's Proposed Findings of Facts and Conclusions of Law highlighted/underlined in the following manner:

a) Highlight/underline in **BLUE** those Findings of Fact which are true;

[Signature]

b) Highlight/underline in **YELLOW** those Findings of Fact which are true but irrelevant or unimportant;

c) Highlight/underline in **RED** those Findings of Fact which are not true; and

d) Highlight/underline in **RED** any misstatement of law contained in the Conclusions of Law.

Opposing Counsel may also attach a Counter statement of Findings of Fact and Conclusions of Law.

Within ten days thereafter the movant shall file its Reply. If a Counter Statement of Findings of Fact and Conclusions of Law has been filed, the movant shall serve upon opposing counsel and attach to its Reply a copy of the Counter Statement of Findings of Fact and Conclusions of Law highlighted/underlined in the manner described above.

(5) Counsel shall file their Proposed Joint Final Pretrial Order by July 5, 2004 and this case shall proceed to trial in the August 2004 trial term.

IT IS SO ORDERED.



Herman J. Weber, Senior Judge
United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Scott Hutchinson Enterprises, Inc., et al.,	:	Civil Action No. C-1-01-776
Plaintiffs	:	Judge Weber
v.	:	
Rhodes, Inc., et al.,	:	SECOND AMENDED SCHEDULING ORDER
Defendants	:	

The above styled case is before the Court on the Plaintiffs' Motion to Amend Scheduling Order. The Court upon review of the file GRANTS said motion. The following schedule is hereby entered and shall control the disposition of the above styled case:

- (1) Plaintiffs will comply with Rule 26(a)(2) of the Federal Rules of Civil Procedure no later than December 1, 2003. Defendants will comply with Rule 26(a)(2) of the Federal Rules of Civil Procedure no later than February 2, 2004.

Both parties pursuant to the Rule will furnish a curriculum vitae, as well as a binding written report of the expert witnesses' testimony to any opposing party.

- (2) The discovery cut-off date is April 2, 2004.
- (3) Joint Status Report will be filed by April 2, 2004.
- (4) All dispositive Pretrial Motions shall be filed by June 11, 2004. Upon filing of a dispositive motion, the movant shall file with the Court and serve upon opposing counsel Proposed Findings of Fact and Conclusions of Law supporting movant's request for

relief. Twenty days thereafter, opposing counsel shall file with the Court and serve with its Response to the dispositive motion, a copy of Movant's Proposed Findings of Facts and Conclusions of Law highlighted/underlined in the following manner:

- (a) Highlight/underline in **BLUE** those Findings of Fact which are true;
- (b) Highlight/underline in **YELLOW** those Findings of Fact which are true but irrelevant or unimportant;
- (c) Highlight/underline in **RED** those Findings of Fact which are not true; and
- (d) Highlight/underline in **RED** any misstatement of law contained in the Conclusions of Law.

Opposing counsel may also attach a Counter statement of Findings of Fact and Conclusions of Law.

Within ten days thereafter the movant shall file its Reply. If a Counter Statement of Findings of Fact and Conclusions of Law has been filed, the movant shall serve upon opposing counsel and attach to its Reply a copy of the Counter Statement of Findings of Fact and Conclusions of Law highlighted/underlined in the manner described above.

- (5) Counsel shall file their Proposed Joint Final Pretrial Order by July 5, 2004 and this case shall proceed to trial in the August 2004 trial term.

IT IS SO ORDERED.

Herman J. Weber, Senior Judge
United States District Court

RECEIVED JUL 25 2003

FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

SCOTT HUTCHINSON ENTERPRISES, INC., et al,

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COURT
SOUTHERN DIST OHIO
WEST DIV CINCINNATI

Plaintiff

v

CIVIL ACTION: C-01-776

RHODES, INC., et al,

Defendant

Judge	<i>4/8/0</i>
Mag.	
Journal	<i>ntd</i>
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(SECOND) - AMENDED SCHEDULING ORDER

The above styled case is before the Court on the Joint Motion of Defendants to Modify Scheduling Order (#42) and Plaintiffs' Response (#43). The Court upon review of the file GRANTS said motion. The following schedule is hereby entered and shall control the disposition of the above styled case:

(1) Plaintiff's will comply with Rule 26(a)(2) of the Federal Rules of Civil procedure no later than October 15, 2003. Defendants will comply with Rule 26(a)(2) of the Federal Rules of Civil procedure no later than December 15, 2003. *(Request Change to 2-2-04)*

Both parties pursuant to the Rule will furnish a curriculum vitae, as well as a binding written report of the expert witnesses' testimony to any opposing party.

(2) The discovery cut-off date is February 15, 2004. *(Request Change to 4-2-04)*

(3) Joint Status Report will be filed by February 15, 2004. *(Request Change to 4-2-04)*

(4) All dispositive Pretrial Motions shall be filed by April 26, 2004. *(Req. Change to 6-11-04)* Upon filing of a dispositive motion, the movant shall file with the Court and serve upon opposing counsel Proposed Findings of Fact and Conclusions of Law supporting movant's request for relief. Twenty days thereafter, opposing counsel shall file with the Court and serve with its Response to the dispositive motion, a copy of Movant's Proposed Findings of Facts and Conclusions of Law highlighted/underlined in the following manner:

a) Highlight/underline in **BLUE** those Findings of Fact which are true;

LHJ

b) Highlight/underline in **YELLOW** those Findings of Fact which are true but irrelevant or unimportant;

c) Highlight/underline in **RED** those Findings of Fact which are not true; and

d) Highlight/underline in **RED** any misstatement of law contained in the Conclusions of Law.

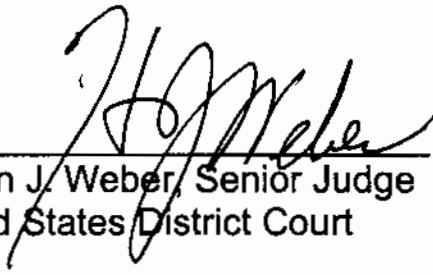
Opposing Counsel may also attach a Counter statement of Findings of Fact and Conclusions of Law.

Within ten days thereafter the movant shall file its Reply. If a Counter Statement of Findings of Fact and Conclusions of Law has been filed, the movant shall serve upon opposing counsel and attach to its Reply a copy of the Counter Statement of Findings of Fact and Conclusions of Law highlighted/underlined in the manner described above.

(5) Counsel shall file their Proposed Joint Final Pretrial Order by July 5, 2004 and this case shall proceed to trial in the August 2004 trial term.

} No change
Requested

IT IS SO ORDERED.



Herman J. Weber, Senior Judge
United States District Court